

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

LDM GROUP, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:12-CV-812-JAR
	)	
REX AKERS and BROOKE AKERS,	)	
	)	
Defendants.	)	

**MEMORANDUM AND ORDER**

This matter is before the Court on Defendants' Motion for Reconsideration of its Order dated March 29, 2013 ordering Defendants Rex and Brooke Akers to produce four witness statements and two draft expert reports to Plaintiff LDM within five days of the date of the Order, i.e., by April 4, 2013. [ECF No. 83] At Defendants' request, the Court stayed its Order requiring production of these documents pending its ruling on the motion. Plaintiff LDM filed its Response to Defendants' motion on April 4, 2013. Defendants did not file a reply. The motion is, therefore, fully briefed and ready for disposition.

In support of their motion for reconsideration, Defendants state they cannot produce the documents pursuant to this Court's order because they are in the possession, custody and control of Lagniappe Health Acquisition Company, Inc., a non-party to this case. As a practical matter, the Court must accept Defendants' representation that they are unable to respond to Plaintiff LDM's request because they have no such documents. Plaintiff LDM has provided no evidence that Defendants have possession, custody or control over the requested documents. Defendants also note that Plaintiff LDM has a pending motion to compel against Lagniappe in the District

Court of Delaware concerning the documents at issue.<sup>1</sup> LDM responds that the motion should nevertheless be denied because the Court's ruling that the documents are relevant and should be produced is still applicable if possession, custody or control is ever obtained. (Doc. No. 84)


Defendants are not required to produce documents not in their possession, custody, or control. Turner v. Roach, 2012 WL 5378254, at \*3 (E.D.Mo., Oct. 31, 2012). Thus, the Court upon reconsideration will modify its ruling on LDM's motion to compel and deny the motion without prejudice with leave to refile should Defendants obtain possession of the documents.

Accordingly,

**IT IS HEREBY ORDERED** that Defendants' Motion for Reconsideration [83] is **GRANTED**.

**IT IS FURTHER ORDERED** that Plaintiff LDM Group LLC's Motion to Compel Production of Documents [39] is **DENIED** without prejudice.

Dated this 19th day of April, 2013.

  
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JOHN A. ROSS  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup>*LDM Group, LLC v. Rex Akers and Brooke Akers*, Case No. 12-mc-209-GMS (D.C. Del)